



File No. S. Bijapur 2/47
Legal DEPARTMENT
A BRANCH

Subject:— Suit Bijapur.

Civil Suit No. 419 of 1946

1) Bhimaji Raghavendra Jainapur. --- / aff

Versus

2) The Province of Bombay ----- Deft.
-
Claim Rs.: 129-3-6

Re:— For refund of Rs 108-6-0 with interest.

P. 23
6

File No.

S. Bij. 2/47

Std. Scott. Slip 24-B

S. Bij. 2/47

C O N T E N T S :

Legal Department File No. S. Bij. 2/47.

Sr. No.	Compilation No.	Subject	Pages.
------------	--------------------	---------	--------

Suits Bijapur.

C. S. No. 419 of 1946

B. R. Jainapur

vs.

The Province of B'bay.

claim — Rs. 129-3-6.

For refund of Rs. 108-6-0
with interest.

1) I. D. G. R.
No. 6337
dt. 18-6-47

Sanctioning the defence
of the suit.

7.

2) I. D. G. R.
No. 9321
19-9-47.

Recording the result
of the suit.

19.

3) ~~Printed~~
~~I. D. G. R.~~
~~No. 6337~~
~~18-6-47~~

(E).
Present on 31-8-1948.

15

Sd/-
Clerk of the Court. It is a copy of the Court Order to refer
the case to the Civil Suit No: 419 of 1948.
In the Court of the Civil Judge, Senior Division, Bijapur.

1. Bhimaji Raghavendra Jainapur, Brahmin, I.A. No. 1,
age 52, occupation Government service,
residence - Gundabayadi, Bijapur. Plff.

1. The Province of Bombay. Judgment and Order.

Claim for court fees jurisdiction - Rs. 129-3-6.

Herein the plaintiff begs, respectfully, to submit as
follows:-

1. Plaintiff is the permanent servant in the Judicial
Department of the Bijapur District. He was the Deputy Naxir
in the District Court from 1928 to 1940. During this period
he was managing several estates of the minors on his official
capacity, under supervision of the District Judge. A depart-
mental enquiry was instituted against him in the year 1942
for certain acts of alleged mismanagements in the course of
his duties. The learned District Judge Mr. D.G. Kamarkar, imposed
upon the plaintiff certain penalties and had also ordered that
the plaintiff should produce the sum of Rs. 1108-6-0, which in
his opinion, was the loss caused by the plaintiff to the Kadkol
Estate. This order was passed on 24-11-1942. The plaintiff

appealed to the Honourable High Court at Bombay against the
order of the District Judge. The Honourable the Chief Justice
before whom the case came up for final hearing, was pleased

to set aside the order of the District Judge, and instead
passed an order merely of censure against the plaintiff. This

order was made on 30-6-1943. On receipt of the order of the
Hon'ble High Court, the District Judge, Bijapur, ought to have
suo moto ordered the refund of the amount of Rs. 1108-6-0 which
the plaintiff had produced in the District Court on 21-12-1942

as per his order dated 24-11-1942. After waiting for some time,
the plaintiff applied to the District Judge, Bijapur, to refund
the amount to him on 30-11-1943. No orders were passed on this
application for one reason or another until 17-4-1946 on which
day, the District Judge appears to have made an order rejecting
the plaintiff's application on the ground that the original

order of Mr. D. G. Kamerkar was a judicial order and there was no specific order of the High Court directing the refund of the amount. This order was communicated to the plaintiff on 25-4-1946.

The plaintiff's case is that the afore-said order of the District Judge is ultra vires and that he had no right to withhold the amount from the plaintiff on any ground. The order passed by Mr. D. G. Kamerkar was not a judicial order passed under the Guardian and Wards Act but was one passed during the course of the Departmental enquiry against the plaintiff under Rule 33 of the Bombay Civil Servants' Conduct, Discipline, and Appeal Rules. Whatever it may be, it became defunct on its being set aside by the High Court. It was also not necessary to make a specific order of refund when the whole of the original order was set aside and another was substituted in its stead. What remained against the plaintiff was only the High Court's order censuring the plaintiff. Plaintiff is therefore entitled to the refund of the amount.

(2) The cause of action for this suit arose on 17-4-1946 when the District Judge Bijapur rejected the plaintiff's application for refund of the suit amount. Even if it be taken that the cause of action arose on 30-6-1946, i.e. the date of the order of the High Court still the suit is in time.

(3) The requisite notice under section 80 of the Civil Procedure Code, 1908, was given to the defendant on 25-6-1946 which was served on the defendant on 26-6-1946.

(4) No amount regarding the suit claim is recovered from the defendant at any time.

(5) The plaintiff and defendant reside within the jurisdiction of this court. The cause of action of this suit arose at Bijapur within the jurisdiction of this court. Hence this court has got jurisdiction to entertain the suit.

(6) The suit is valued for the purpose of court fee and jurisdiction as follows:

3 7

Principal

Rs. 108-8-0.

Interest at the rate of 6% on the said sum by way of loss of interest (compensation) by illegal detention of the money of which the refund is claimed, from 30-6-1943 to 25-8-1946.

192-00-18

20-8-0.

Cost of notice served on defendant

0-5-6. 1-8-1943

Thus Total amount Rs. 128-3-6-

Plaintiff has paid court fee on the said amount for the purposes of jurisdiction of the court and pleader's fees, the valuation is the same.

(6A) 29th and 30th August being court holidays, the suit is filed to day the opening date 31-8-1946.

(7). Plaintiff therefore prays that he be awarded from the defendant, the amount of Rs. 129-3-6 as claimed in para 6 above with costs of this suit.

A decree in terms of the above prayer be kindly pass-

Sd/- B.R.J.

-ed. Bijapur: 26/31-8-1946.

Plaintiff.

Herein, I, B.R. Jainapur, plaintiff, above named, do hereby solemnly affirm that what has been stated above in paras 1 to 7 is true and correct to the best of my knowledge and belief.

Bijapur. 26/31-8-1946

Sd/- B.R. J.

Plaintiff.

Drafted as per instruction given by the plaintiff and filed in court on 31-8-1946.

Sd/- B.R. Jainapur.

Pleader at Bar.

5-27

In the Court of the Civil Judge, Senior Division,
Bijapur.
Civil Suit No. 419 of 1947.

1. B.R.Jainapur.....Plff.

Vs.

1. The Province of Bombay ... Deft.

Herein the defendant by his ~~his~~ written-statement
states as under:-

1. The Plff. preferred an appeal to the High Court against the order passed by the District Judge Bijapur which was forwarded to High Court on 8-5-46. As directed by the High Court the amount of Rs. 108-6-0 was refunded to him on 2-4-1947. Therefore the cause of action no longer survives and the suit should be dismissed.
2. The Plff filed this suit without waiting for the orders of the High Court in the appeal referred to in para 2 above. He is therefore not entitled to the costs of this suit.
3. The Plff. is not entitled to interest for any period prior to the filing of the suit as claimed by him in para 6 of the plaint. He is not entitled to interest at 6 % which is too high rate.
4. The Plff. is not entitled to cost of notice as claimed by him in para 6 of the plaint.

It is submitted that Plff's suit be ordered to be dismissed with costs.

District Government Pleader,
Bijapur.

20/5

I, Rao Sahib A.C. Angadi B.A.LL.B., District
Government Pleader Bijapur, hereby declare that
what is stated in paras 1 to 5 above is true on
information received and believed to be true.

Signed in Bijapur on

District Government Pleader,
Bijapur.

7 4f

A Suits.
Bijapur
For refund of Rs. 108-6-0
with interest. A

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 6337
Bombay Castle, 18th June 1947.

Letter from the District Government Pleader, Bijapur,
No. 427, dated the 3rd April 1947 - Forwarding the papers in
the suit noted in the
margin and requesting
sanction to its defence.

B -----:
In the Court of the Civil Judge, :
Senior Division, Bijapur. :
Civil Suit No. 419 of 1946. :
-----:

Bhimaji Raghavendra Jainapur :
Vs. :
The Province of Bombay :
-----:

Claim - Rs. 129-3-6 B
-----:

Memorandum to the
District Government
Pleader, Bijapur, No.
5181, dated the 21st
May 1947 - Forwarding
a Memorandum of Instruc-
tions with its accompa-
niments in advance.

Endorsement by the Collector of Bijapur, No. L.N.S.-152,
dated the 20th May 1947 - Forwarding an endorsement by the
District Judge, Bijapur, No. 1766, dated the 14th May 1947
together with papers of the case noted above and requesting
sanction to its defence.

Endorsement by the Commissioner, Southern Division, No. L.S.T.
377, dated the 27th May 1947 - Forwarding the above with his
concurrence.

RESOLUTION:- Sanction is accorded to the defence of the
suit on the lines of the accompanying Memorandum of Instructions.

By order of the Governor of Bombay,

P. M. Lad,

Secretary to Government.

To

*The Home Department

*The Revenue Department,

*The Commissioner, Southern Division,

*The District Judge, Bijapur,

*The Collector of Bijapur,

The District Government Pleader, Bijapur (with 2 copies
of the Memorandum of Instructions).

*with a copy of the Memorandum of Instructions.

Kc. 17.6.

Q. sent to me for review,
on 1/1/47
me
1/1/47

Subd.

Papers may await press copies.

KRB
1/1/47

A.S.M.
1/1/47

substituting a mere censure in place of the fine of Rs. 108-6-0 inflicted upon him by the District Judge. This order was passed by the High Court on 30-6-43. In pursuance of this order, the then learned District Judge ought to have refunded the amount to plff. holding his order of inflicting a penalty on plff. to have been set aside by the High Court. As plff. did not get back his amount, he applied to the then District Judge on 31-11-43 for the refund of the amount. The then learned District Judge did not pass any orders till 17-4-1946 on the application of the plff. On 17-4-1946, the then learned District Judge rejected the application of the plff. on the ground that the High Court's order dated 30-6-43, did not direct him to refund the amount. As against this order, plff. preferred an appeal to the High Court which is pending. Plff. filed this suit to get back the amount with interest, because the period of three years was going to be expired very soon.

2. It appears from the xxx written statement of deft. that the amount was refunded to the plff. on 2-4-47 i.e. after the filing of the suit. Now the dispute centres round the payment of costs and interest to plff. The learned pleader of deft. argues that plff. is not entitled to any interest in view of his blameworthy conduct in not waiting till the decision of appeal. Plff. Ex. 16 urges before me that he had borrowed the amount from the Govt. Society at high rate of interest in order to meet this payment. This amount was paid to the credit of Kadkol estate. The cash amount in Kadkol estate was invested in Postal Savings and later on in Govt. securities. The Kadkol estate has utilised this amount and has realised some income in the form of interest. By virtue of the High Court's ~~xxx~~ order dated 30-6-43, the gain

9. 62

In the Court of the Civil Judge, Senior Dr., Bijapur.

Civil Suit No. 419 of 1946.

1. Bhimaji Raghvendra Jainapur,
Brahmin, 52, Government service,
of Bijapur, Gundavadi..... Plff.

Vs.

1. The Province of Bombay..... Defts.

Claim Rs.

The Plaintiff sues to recover Rs. 129-8-6 with costs of the suit, alleging that plff. is a permanent servant in the Judicial Department, that he was the Deputy Nazir in the District Court from 1928 to 1940 that during that period he was managing several estates of the minors under the supervision of the District Judge, that a departmental enquiry was instituted against him in the year 1942 for certain acts of alleged mismanagement in the course of his duties, that the learned District Judge, Mr. D. G. Kamerkar, imposed upon him a penalty of Rs. 108-6-0 to the Kadkol estate on the ground that he caused loss to that estate to that extent, that this order was passed on 24-11-1942, that he appealed to the High Court, that the Hon'ble Chief Justice set aside the order, by substituting a mere censure in place of the penalty on 30-6-43, that the District Judge, Bijapur in pursuance of this order, ought to have refunded the amount of Rs. 108-6-0 which he had produced in the Court on 1-12-42, that after waiting for a long time, he applied to the District Judge, Bijapur, to refund the amount to him on 30-11-43, that no orders were passed on his application until 17-4-46 on which day the District Judge passed an order rejecting his application on the ground that the original order of Mr. D. G. Kamerkar was a judicial order and that there was no specific order of the High Court directing the refund of the

the amount, that this order was communicated to the plff. on 25-4-1946, that the order passed by Mr. D.G. Kamerkar was not a judicial order under the Guardian and Wards Act but was an administrative order passed under Rule 33 of the Bombay Civil Servants' Conduct, Discipline and Appeal Rules, that plff. is therefore, entitled to the refund of the amount with interest at 6 p.c. p.a. by way of compensation from 30-6-43 to 26-8-46, that legal notice was served upon Government that the cause of action arose on 30-6-43, that it being a holiday the suit was filed on the next day.

The deft. contends in his written statement Ex. 1 that the amount of R. 108-6-0 was refunded to plff. on 2-4-47, that therefore, plff.'s cause of action does not survive, that plff. did not wait till the decision of the High Court in his second appeal, that plff. is not entitled to interest at 6 p.c. p.a. and to costs of the suit.

The issues for trial as per Ex. 14 are:-

1. Is not plff. entitled to interest?
2. Is not plff. entitled to costs?

My findings are:-

1. He is entitled.
2. He is entitled.

Reasons:

Issue No. 1. Plff. was acting as Deputy Nazir in District Court from 1928 to 1940. A departmental inquiry was started against him in 1942 regarding some mismanagement in the Kadkol estate. The then District Judge Mr. D.G. Kamerkar ordered on 24-11-1942, that the Deputy Nazir was responsible for the loss of R. 108-6-0 to the estate and thus ordered him to pay up that amount. As per order, plff. paid the amount in Court on 1-12-1942. He then preferred an appeal to the High Court as against this order and the High Court modified the order by substi-

on 1st August 1947
copy applied for by Rao Sahib A.C. Angadi Esq. Dist. Govt. Pleader
copy ready for delivery on 11th (eleventh) August 1947.

Sd/-
Clerk of the Court.

Copying fees being paid copy delivered on 14th (fourteenth) August 1947.

Sd/-
Clerk of the Court.

Decree in Original (Order 20, rule 6, 7)

(Form No. 1, Appendix D, Schedule No. 1)

Decree.

In the Court of Civil Judge, Sr. Dn. Bijapur.

Civil Suit No: 419 of 1946.

1. Bhimaji Raghavendra Jainapur, Brahmin,

52, Occupation Government Service, Residence

Gundabavadi, Bijapur..... Plff.

Vs.

1. The Province of Bombay.

Def.

Claim for court fee and jurisdiction.

Rs. 129-3-1946.

Admitted on Registered on 19-9-1946.

Decided on 31-7-1947.

1. Plaintiff is the permanent servant in the Department of the Bijapur District. He was the Deputy Nazir in the District Court, from 1928 to 1940. During period he was managing several estates of the minors in his capacity under supervision of the District Judge. A Departmental enquiry was instituted against him in the year 1942 for certain acts of alleged mismanagements in the course of his duties. The learned District Judge Mr. D.G. Kamarkar, imposed upon the plaintiff certain penalties and had also ordered that the plaintiff should produce the sum of Rs. 108-6-0 which in his opinion was the loss caused by the plaintiff to the Kadkol estate. This order was passed on 24-11-1942. The plaintiff appealed to the Honourable High Court at Bombay against the order of the District Judge. The Honourable the Chief Justice before whom the case came up for final hearing, was pleased to set aside the order of the District Judge, and in its stead passed an order merely of censure against the plaintiff. This order was made on 30-6-1943. On receipt of the order of the Honourable High Court, the District Judge, Bijapur, ought to have suo moto ordered the return

District Judge, Bijapur, ought to have suo moto ordered the refund of the amount of Rs. 108-6-0 which the plaintiff had produced in the District Court on 1-12-1942 as per order dated 24-11-1942. After waiting for some time, the plaintiff applied to the District Judge, Bijapur to refund the amount to him on 30-11-1943. No orders were passed on this application for one reason or another until 17-4-1946 on which day, the District Judge appears to have made an order rejecting the application on the ground that the original order of Mr. D.G. Kamarkar was a judicial order and there was no specific order of the High Court directing the refund of the amount. This order was communicated to the plaintiff on 25-4-1946.

The plaintiff's case is that the afore-said order of the District Judge is ultra vires and that he had no right to withhold the amount from the plaintiff on any ground. The order passed by Mr. D.G. Kamarkar was not a judicial order passed under the Guardian and Wards Act but was one passed during the course of the departmental enquiry against the plaintiff under Rule 33 of the Bombay Civil Servants' Conduct, Discipline and Appeal Rules. Whatever it may be it became defunct on its being set aside by the High Court. It was also not necessary to make a specific order of refund when the whole of the original order was set aside and another was substituted in its stead. What remained against the plaintiff was only the High Court's order censuring the plaintiff. Plaintiff is therefore entitled to the refund of the amount.

2. The cause of action for this suit arose on 17-4-1946 when the District Judge, Bijapur rejected the plaintiff's application for refund of the suit amount. Even if it be taken that the cause of action arose on 30-6-1943 i.e. the date of the order of the High Court, still the suit is in time.

3. The requisite notice under section 80 of the Civil Procedure Code, 1908 was given to the defendant on 25-6-1946 which was served on the defendant on 26-6-1946.

4. No amount regarding the suit claim is received from the defendant at any time.

5. The plaintiff and defendant reside within the

jurisdiction of this court. The cause of action of this suit arose at Bijapur within the jurisdiction of this court. Hence this court has got jurisdiction to entertain the suit.

6. The suit is valued for the purpose of court fee and jurisdiction as follows:-

Principal . . .	Rs. 128-6-0
Interest at the rate of 6% on the said sum by way of loss of interest (compensation) by illegal detention of the money of which the refund is claimed from 30-6-1943 to 25-8-1946 . . .	Rs. 20-8-0
Cost of notice served on defendant.	" 0-5-6. Five annas & six pies.

Thus the total amount Rs. 129-3-0.

Plaintiff has paid court fee on the said amount for the purpose of jurisdiction of the court and pleader's fees the valuation is the same.

8. 29th and 30th August 1946 being Court holidays the suit is filed today, the opening day 31-8-1946.

7. Plaintiff therefore prays that he be awarded from the defendant, the amount of Rs. 129-3-6 as claimed in para 6 above with cost of this suit.

A decree in terms of the above prayer be kindly passed.

The suit coming this day 31-7-1947, before N.V. Ranasubhe, Esquire, Civil Judge, Sr. Ln., Bijapur in the presence of Mr. G.R. Jainapur, pleader for plaintiff and Rao Sahab, Angadi, the District Government Pleader for defendant, it is decreed as follows:-

Plaintiff do recover Rs. 13-2-8 and full costs of the suit from defendant. The defendant to bear his own costs.

P.T.O.

Bill of Costs.

Costs incurred by the plff.

Costs incurred by the deft.

	Rs.	A.	P.		Rs.	A.	P.
1. Stamp for the plaint on Rs.129-13-6-.	12-	3-	0	1. Stamp for set off cross suit.	-	-	-
2. - Do - for Vakalat.	0-	12-	0.	2. - Do - for Vakalt.	-	-	-
3. - Do - for papers Exhs. file.	-	-	-	3. - Do- for paper (Exhs. file(Ex. 6,7,8,9,15,18.	3-	12-	0
4. Subsistence for witness.	-	-	-	4. Subsistence for witness	-	-	-
5. Pleader's fee on suit claim Rs. Pleader's fee on cross suit.	15	0-	0.	5. Pleader's fee. Pleader's fee on cross suit.	15	0-	0.
6. Service of process Postal charges.	-	12-	0.	6. Service of process	-	-	-
7. Commissioner's fee.	-	-	-	7. Commissioner's fee.	-	-	-
8. Translation fee.	-	-	-	8. Translation fee.	-	-	-
9. Copying fee.	-	-	-	9. Copying fee.	-	-	-
10- Adjourned costs.	-	-	-	10. Adjourned costs.	-	-	-
11. Stamp for application to bring heir.	-	-	-				
Total.	28-	14-	6.	Total	18-	12-	0
Cost disallowed.				Costs disallowed.			
On plaint.	-	-	-	On cross suit.	-	-	-
On pleader's fee	-	-	-	On pleader's fee.	-	-	-
On process.	-	-	-	On process	-	-	-
On papers (Exhs. file).	-	-	-	On papers(Exh. file)	-	-	-
				Ex. 6,7,8,9,15,18,	3-	12-	0.
Balance total.	28-	14-	6-	Balance total.	15-	0-	0.

Given under my hand and the seal of the Court this day

31st July 1947.

Sd/- Rajatara,
clerk

Seal of the
court.

Plaintiff's pleader.

Sd- N.V.Ransubhe,

Civil Judge, Sr. Jn.,
7-3-1947.

Defendant's pleader. Sd/- A.C.Angadi.
D.G.P.

The parties to this litigation are hereby informed that the documents if any, produced by them if not taken back are liable to be destroyed (will be destroyed) after the disposal of the appeal, if any preferred.

Typed by,
Sd/-
Sectioner.

Compared by
Sd/-
Sectioner.

"True Copy".

Sd/ -

Clerk of the Court.

Suits.

Bijapur.

For refund of Rs. 108-6-0 with interest.

GOVERNMENT OF BOMBAY.

Legal Department.

Resolution No. 732.

Bombay Castle,

19th September 1947.

Read Government Resolution, Legal Department, No.

6337, dated the 18th June 1947.

y b 3

In the Court of the Civil Judge,
Senior Division, Bijapur.
Civil Suit No. 419 of 1946.

Rhimaji Raghavendra Jainapur

Vs.

The Province of Bombay.

Claim - Rs. 129-3-6

Letter from
the District
Government
Pleader,
Bijapur, No.
670, dated the
1st August
1947 addressed
to the Collector
Bijapur stating
that the suit

noted in the margin was decided by the Civil Judge, Senior
~~Southern~~ Division, Bijapur on 31st July 1947 & when the
following order was passed :-

"Plaintiff do recover Rs. 13-2-8 and full costs of the
suit from defendant. The defendant to bear his own costs."

p 11
Endorsement from the District Government Pleader,
Bijapur No. 732, dated the 19th August 1947 forwarding
an uncertified copy of the decree.

RESOLUTION.- The result of the suit is recorded

By order of the Governor of Bombay,

Original

R. M. Mehta

R.M. Mehta,
Assistant Secretary to Government.

To

The Home Department,
The Revenue Department,
The Commissioner, Southern Division,
The District Judge, Bijapur,
The Collector of Bijapur.

Submitted for signature.

suit No. 419
R.

17/8

AS

18

Submitted after issue.

s. Fiteri - in Await press copies

ASU

20/9

A-5.



21

Suits :

Bijapur.

For refund of Rs. 108-6-0 with interest.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 6337.

Bombay Castle, 18th June 1947.

Letter from the District Government Pleader, Bijapur, No. 427, dated the 3rd April

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), BIJAPUR.

1947—Forwarding the papers in

Civil Suit No. 419 of 1946.

Bhimaji Raghavendra Jainapur

... ..

the suit noted in the margin ; and

versus

requesting sanction to its

The Province of Bombay

... ..

defence.

Claim—Rs. 129-3-6.

Memorandum to the District Government Pleader, Bijapur, No. 5181, dated the 21st May 1947—Forwarding a Memorandum of Instructions with its accompaniments in advance.

Endorsement by the Collector of Bijapur, No. L.N.S. 152, dated the 20th May 1947—Forwarding an endorsement by the District Judge, Bijapur, No. 1766, dated the 14th May 1947, together with papers of the case noted above and requesting sanction to its defence.

Endorsement by the Commissioner, Southern Division, No. L.S.T. 377, dated the 27th May 1947—Forwarding the above with his concurrence.

22/24
suit. Such interest can not be awarded unless there is an agreement for it, or if it is payable by custom or usage of trade having the force of law or under the provisions of any substantive law entitling the plaintiff to recover interest (Bengal Nagpur Railway v. Ratnaji, 40. Bom. L. R. 746). Even under the interest Act of 1839 interest prior to the institution of a suit cannot be claimed unless a demand of payment has been made in writing (7 Bom. L. R. 798). It seems therefore that the claim for interest can be successfully resisted.

As regards costs, it may be urged that the plaintiff was unduly hasty in going to Court without waiting for the result of the appeal to the High Court and he is not therefore entitled to costs. With this observation the question of costs may be left to the Court's discretion. The charge for notice is negligible.

New file

S Bij / 47

17.10.47